# THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. IX, NO. 9 JUNE, 1930 PAGES 193-216

COMPLETE NUMBER 184

*Published by*
THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

*The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal with members of the bar, exclusively.*

## CORPORATE LIFE IS TENACIOUS

In Petrogradsky Mejdunarodny Kommerchesky Bank vs. National City Bank, 253 N. Y. 23, 170 N. E. 479, an action brought by surviving refugee directors of a bank chartered by the Imperial Russian government, in behalf and in the name of the bank, to recover from a New York bank a deposit therein to its credit, it was urged by the defendant that the Russian bank having been dissolved by decree of the Russian Soviet Republic it is no longer a juristic person. Speaking for the New York Court of Appeals Mr. Chief Justice Cardozo says that decrees of the Soviet Republic are not recognized as law in the United States and that "What the law itself has granted (i.e., the corporate life) the law must take away." "Neither bankruptcy, nor cessation of business, nor dispersion of stockholders, nor the absence of directors, nor all combined, will avail without more to stifle the breath of juristic personality. The corporation abides as an ideal creation, impervious to the shocks of these temporal vicissitudes." And, if assets remain, "The corporate life in that event does not serve an expropriated being, but one endowed with worldly goods, and in need of capacities adequate to protect them. Survival follows in such circumstances from the very concept of a corporation as it is known to our law."

*President.*

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The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August, and September. Its purpose is to provide, in systematic and convenient form, brief digests of significant current decisions of the courts, and the more important regulations, rulings or opinions of official bodies, which have a bearing on the organization, maintenance, conduct, regulation, or taxation of business corporations. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices (see next page).

When it is desired to preserve the Journal in a permanent file, a special and very convenient form of binder will be furnished at cost ($1.50).

## Contents for June

# History Repeats Itself

"In reviewing the results of our business for the past year, we consider them very flattering, inasmuch as we have slowly, but steadily increased in the number of corporations represented by us, both Foreign and Domestic, as well as, the increase of income, and the net earnings, and we think that with the general improvement in business which is now manifesting itself, and the seeking of the investment of capital which will necessitate the formation of new companies, that our prospects for the future are very good. We feel after the past year of business depression, that instead of going behind, we have gradually and surely increased in all branches of our business."

No, the foregoing is not our statement, de novo, as of today, but is a verbatim copy of the Report of the Treasurer to The Corporation Trust Company of New Jersey for its second full fiscal year made at the meeting of the directors of the Company on July 1, 1895—thirty-five years ago. However, the paragraph, changing "the past year of business depression" to "the past half-year of business depression," may stand as a present expression of what the last twelve months have meant to us, in a business way, and of our outlook on the future.

In the same Report of 1895 the Treasurer, with a seeming suggestion of apology, calls attention to an increase in expenses, other than those incident to salaries, stating that this is to be explained by the purchase of another safe and some carpets. Evidently it was felt, during the year, that the fact that we "had a safe" should not stand in the way of the purchase of another one, necessity calling. The Treasurer softened the blow of his announcement somewhat, though, by adding, "They are all paid for, however." Well, as our policy then was not to hamper ourselves, to the detriment of the service given, with inadequate equipment, and to pay as we bought, so it has continued to the present moment.

The Treasurer further reported that "there is due us $939, all of which we consider good and collectible." Undoubtedly all of the $939 saw the inside of that new safe, for part of a day at least or over night, within a short time. A report of to-day would be equally satisfactory in this regard, one reason for which is that in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, we deal with members of the bar, exclusively.

# Domestic Corporations

**California.**

**On a charge that the purchase of stock of another corporation by a corporation is ultra vires the latter.** On the hearing of this case, into the merits or results of which we need not go, it was urged that one of the corporations indirectly involved was without power to purchase shares of stock of another corporation as it had done. The District Court of Appeal, Third District, California, cites as decisive of this particular question in the instant case Evans vs. Bailey, 66 Cal. 112, 4 P. 1089, wherein the California Supreme Court said: "A corporation is not presumed incapable of purchasing and holding shares of the stock of another. The burden of proof is upon the party who claims that the purchase and ownership of the stock was not within the scope of the powers of the corporation." The court (in the present action) then says that as the articles of incorporation of the various corporations were not put in evidence it cannot presume that the one company did not have authority to make the purchase of the capital stock of the other. Roberts et al. vs. Prisk et al., 284 P. 984.

**Delaware.**

**If holders of proxies are present at stockholders meeting the shares represented thereby are to be counted as present for quorum establishing purposes though the proxies be not presented.** This is an action on petition for a summary order appointing a Master to hold a stockholders meeting for the purpose of electing directors of a Delaware corporation, it being alleged that at the last annual meeting for election of directors no directors had been elected. Stockholders assembled for the meeting, and, as averred in the answer on behalf of the corporation by one (the Guth) faction, held a legal meeting and duly elected directors; but, as agreed in the answer in the same behalf by the other (the Miller) faction, there was no legal meeting, for lack of a quorum, and so no election. The sole question before the court was—were directors elected? If there was a quorum present when the stockholders met, there was a legal meeting and directors were elected (by the Guth faction). To answer the question the principal matter to be determined by the court was whether or not a large number of shares were present for quorum counting purposes, such shares being represented by proxies, the proxy holders themselves having been present at the opening of the meeting, in any event, and having participated therein more or less actively, for a time thereafter at least, but having refused to present the proxies. Counting the shares represented by these proxies a quorum was present; otherwise, not. The Delaware Court of Chancery, New Castle County, holds that such shares were present for the stated purpose and so that the (Guth faction) directors were elected. The court says that while there is no question but that an agent may "always abandon his agency at the expense of assuming the risk of liability if the circumstances are such that the law attaches liability," and so, that a proxy holder is free to fail to act under it

but if the agent (the proxy holder) is present and participating in some way in the business with which the proposed agency is concerned then the giver of the proxy must be considered to be present also, to the extent of the shares covered by the proxy, whether the paper evidencing the relationship be presented or not, since the paper is not the relationship but the evidence thereof, merely, the presentation of which is essential only as proof of the relationship to the satisfaction of others. The paper proxies were before the court; these showed that the proxy holders, who were present at the meeting, were the duly constituted spokesmen for a certain number of shares: "This is a fact and failure to show the written evidence of it at the meeting cannot destroy it as a fact." Further, shares having once been present by proxy in sufficient number to constitute, with others present, a quorum for holding a meeting, may not thereafter be withdrawn by the proxy holders merely to effect a "lack of a quorum" and thus prevent action. The court says: "Had they been the owners of the stock represented by these proxies, under the ruling in Hexter vs. Columbia Baking Co., 145 A. 115 (THE CORPORATION JOURNAL for May, 1929, page 415), their withdrawal would not have the effect of breaking the quorum. The fact that they were not the owners but only the representatives of the owners, does not, under the circumstances shown, make any difference in the result. As they had the power to and did take their principals into the meeting, so they could not take them out of the meeting, just as the principals could not have legally taken themselves out if they had been personally present and done what their representatives did." Duffy vs. Loft, Incorporated, decided April 29, 1930 (not yet officially reported). Hastings, Stockly and Morris, of Wilmington, for the petitioner. Paul Leahy, and Richard B. Tippett and Derby A. Lynch, both of Baltimore, Maryland, for the Miller faction. George N. Davis, Charles C. Keedy and Clarence A. Southerland, all of Wilmington, and Arthur F. Driscoll, of New York City, for the Guth faction.

**Unfair competition; similarity of corporate names.** In The CORPORATION JOURNAL for May, 1930, page 174, at Delaware, under the caption as above, was digested at some length the decision of the Delaware Court of Chancery in Standard Oilshares, Inc. vs. Standard Oil Group, Inc. Citing that case the same court says, in the instant case: "Inasmuch, however, as a corporate name is now, under the Delaware law, to be categorized with unregistered trademarks the protection to the complainant can extend only so far as is allowable under the general principles of law governing in unfair competition cases. Under those principles, trademark rights rest in user. As was said by the Supreme Court of the United States in Hanover Milling Co. vs. Metcalf, 240 U. S. 403, 'the mark of itself, cannot travel to markets where there is no article to wear the badge and no trader to offer the article.'" American Radio Stores, Inc. vs. American Radio & Television Stores Corporation, decided April 4, 1930 (not yet officially reported). William S. Potter, of Wilmington, for the complainant. Charles C. Keedy, of Wilmington, for the defendant.

**Illinois.**

**Directors may not fill vacancy on board caused by death or resignation.** A board of three directors of an Illinois corporation was reduced to two members by the resignation of one director on the sale by him of his share holdings. At a special stockholders meeting called for the purpose a third director was elected. The validity of the election was questioned and this quo warranto proceeding to oust the newly elected director was instituted. The Supreme Court of Illinois says, on appeal, reversing the court below and sustaining the election, "The real question involved in the decision of the case is whether the stockholders were authorized to elect a director or whether that was required to be done by the then two directors." The Illinois General Corporation Law (paragraph 5 of Section 21) provides that directors shall "fill all vacancies which may happen in the board of directors caused by death, resignation or otherwise, until the next annual meeting of the stockholders." Section 3 of Article 11 of the Illinois Constitution provides that in all elections for directors each stockholder shall have the right to vote his shares and "that such directors or managers shall not be elected in any other manner." The court says that the provisions of the constitution and the statute are inconsistent, the one with the other, and both cannot be given effect, and so that the statute must fall. "The stockholders have a right to direct the affairs of the corporation through directors elected by them, and they cannot be deprived of that right under the constitution." Inasmuch as, here, there were but two directors remaining in office and they "disagreed about everything," and so, of course, could not have agreed on a third director, the court thinks that "this case shows the wisdom of the constitution and the invalidity of the statute," since absent a directorate capable of functioning a corporation is unable to function, properly. Mr. Justice Stone dissents. Weber vs. Cohn, decided April 17, 1930 (not yet officially reported).

**Manitoba.**

**Issue of stock, as full paid, for services to be rendered.** The syllabus of this decision as it appears in the Dominion Law Reports reads as follows: "Where, at a general meeting of the stockholders of a company, shares of stock are allotted to a person in consideration of his accepting the position of president and manager of the company, such allotment is intra vires and valid." But the facts and conditions are unusual. The man to whom the shares in question were allotted (additional to those for which he subscribed and paid for in cash) was recognized as being peculiarly well fitted to organize and carry on the business of the corporation; his name would be of assistance in securing credit; he would not undertake the management unless he had control. It was feared competitors would buy control. The resolution of the stockholders authorizing the directors to enter into the agreement with this man as president and manager, the consideration being the issuance to him of the additional shares, provided that the agreement should contain a covenant that no dividends should be paid to him on

these shares but in the event of profits being made he should receive a bonus of 5 per cent thereof, and that no transfer of the shares should be made except under a by-law passed by the directors and approved by the stockholders. It was contended that the issuance of those particular shares was fraudulent, or, in the alternative, that they had been issued at a discount contrary to the provisions of the Companies Act, R. S. M. 1913, C. 35. The Manitoba King's Bench holds as stated in the quoted syllabus and that the shares were issued "as fully paid-up." Waschysyn vs. Kildonan Ice & Fuel Co., et al [1929], 4 D. L. R. 555. P. C. Locke, for plaintiff. J. H. Stitt, for defendants.

**Ohio.**

**Penalty for failure of corporation to mail statement of profit and loss and balance sheet to stockholder on request.** The Ohio statutes provide that every corporation for profit shall lay before the shareholders at the annual meeting or at any other meeting at which directors are to be elected, a statement of profit and loss and a balance sheet, and further, that on written request by any stockholder, made after notice of such meeting, copies of such shall be mailed to him. If the request is not complied with within three days after it is made the corporation is liable to a fine of $100 and a further penalty of $10 for each day the default continues to be paid to the stockholder making the request. This is an action to recover such penalty by a stockholder with whose request, as stated, his corporation did not comply. As a defense it was urged that the statute is unconstitutional in that because of the excessive penalty it denies equal protection of the laws and deprives defendant in error of its property without due process of law. Counsel says, as for example, if 1000 shareholders made request and there was failure to comply a corporation would immediately become liable to a penalty of $100,000 plus $10,000 for each day of noncompliance, which at the end of the year permitted for the bringing of an action to recover would amount to $3,750,000. The Court of Appeals of Ohio sustains the statute (reversing the court below so far as the company defendant is concerned, directing that the demurrer sustained below be overruled) saying that "one answer to this contention is that the penalty can easily be avoided by mailing the statement." The court says: "The corporation laws of this state require publicity so far as shareholders are concerned, and the General Assembly may make the penalty sufficient to secure that publicity." Harpster vs. The Big Four Coal Co., decided March 31, 1930 (not yet officially reported). Tracy, Chapman & Welles, for plaintiff in error. Marshall, Melhorn, Marler & Martin, for defendants in error.

**Texas.**

**General proxy may not be voted on question of consolidation of one company with another.** The Court of Civil Appeals of Texas, Dallas, says here that "The authorities are uniform in holding that a general proxy executed at the time of the purchase of stock in a corporation is limited to the conduct of the ordinary business of

the corporation." Case and text authorities are cited and quotations therefrom are given. The court then states: "Under these authorities, declaring the power of a general proxy holder, this court must hold that a general proxy only authorizes the holder to vote on the ordinary affairs of the corporation, such as the election of directors, etc., and does not authorize such holder to vote on the extraordinary matter of consolidating one company with another." To the extent that the judgment below decreed that the attempted consolidation of two building and loan associations was void it is affirmed. Fidelity Building and Loan Assn. vs. Thompson et ux., 25 S. W. (2d) 247. Paul T. Doss and M. B. Solomon, both of Dallas, for appellant. Turner, Rodgers & Winn, of Dallas, for appellees.

**Utah.**

**Right of stockholder to examine the books of his corporation.** Here it was urged that the stockholder's repeated requests to inspect, several of which had been granted freely but were refused finally because he declined to state as requested what information he wanted and what books he wished to examine, were made from an improper motive, he being a stock salesman for a competing company, and to annoy defendant and to interfere with and disrupt its business. The Supreme Court of Utah affirms the judgment below for petitioner for a writ of mandate. After saying that one who is regularly a stockholder of record is presumed to be a bona fide stockholder and that here nothing appears to overcome the presumption, the court states that the Utah statute, granting as it does, in terms, to a stockholder the right to inspect at all reasonable hours, enlarges the stockholder's common-law right and that under it his motive is immaterial and may not be questioned, generally—that is, absent fraud, conspiracy, furtherance of a blackmailing scheme, etc. "Decisions of most of cases to the contrary are based either on the common law or on statutes different from ours." It is said that allegations that the stockholder is an employee of a competitor and intends to use the information gathered from his inspection for his own benefit and that of the competitor and to the detriment of his own corporation, even if made as facts rather than on mere information and belief, as here, would not constitute a defense. As to the desire to harrass—"all that is a mere conclusion without any alleged facts to support it." Holmes vs. Bishop et al., 285 P. 1011. A. A. Duncan, of Salt Lake City, for appellant. B. C. Call, of Brigham City, for respondent.

**Washington.**

**Guaranty by individual that dividends on preferred stock will be paid.** A corporation acquired a parcel of real estate issuing a block of 20-year preferred stock therefor such stock carrying a guaranteed 8 per cent dividend rate, cumulative. Incident to the transaction an individual entered into a contract with the vendors of the realty by which he guaranteed the payment of the preferred stock dividends until redemption of the stock by the corporation, pledging a block

of common stock of the same corporation as security for performance. The dividends for the first year were paid (whether by the corporation or the guarantor is not disclosed), but for a period of years there was default. Action is to foreclose the pledge of the common stock. The Supreme Court of Washington affirms the judgment below for the plaintiff, the court holding, too, that by the judgment the appellant pays his own debt and not the debt of another and is not entitled to subrogation. It was urged that as the dividend provision was an unconditional guaranty to pay whether out of profits or not it was invalid and so that the personal guaranty was for the performance of an illegal contract, and as the principal was not bound, neither is the surety. The court holds that as under the Washington statute dividends may be paid from profits only the corporation's guaranty is for payment only if dividends are earned and its effect is that if dividends are not earned they are cumulative. The record does not show whether or not dividends were earned; it does show that they were not paid; and, says the court, "assuming that none was earned, it does not follow that the individual guarantor is thereby released, or that his contract is unenforceable." Austin vs. Wright et al., 286 P. 48. Robert A. Devers, of Seattle, for appellant. G. E. M. Pratt and L. A. W. Stephan, both of Seattle, for respondent.

# Foreign Corporations

**Arkansas.**

**On what constitutes "doing business."** Appellee, here, is a Tennessee corporation engaged in the wholesale drug trade; it is not licensed to do business in Arkansas; it sold and shipped drugs from without the state to a retailer in Arkansas on orders received by it in Memphis by mail either direct from the customer or from one of its traveling salesmen (with authority limited to soliciting) who had taken the orders; it took a second mortgage from its customer on a parcel of the latter's real estate to protect its account; when bankruptcy overtook the customer it purchased such customer's stock of drugs and carried on the retail business for from ten days to two months until the going business could be sold; the sale was effected. Previous to the bankruptcy appellee, on foreclosure, bought in the real estate covered by the mortgage referred to above and sold it, taking a mortgage to secure payment. This action is to foreclose such mortgage. The defense was that appellee as a foreign corporation doing business in Arkansas without authority was not entitled to maintain the action. The Supreme Court of Arkansas affirms the judgment below sustaining the right of the corporation to sue. The court says that appellee was not doing business in Arkansas within the meaning of the statute: that the initial drug selling business was interstate rather than intrastate; that the authorities sustain the principle of law that a foreign corporation has the right to take a mortgage (in connection with an account arising in interstate commerce) and to foreclose it without complying with state "doing business" requirements; and that "appellee never intended

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In the incorporation of a new company, we bring the attorney complete comparative information as to requirements, costs, restrictions and advantages under the laws of various states, that he may select scientifically the one best state for his client's purposes; we investigate in advance the availability of the proposed corporate name so there will be no trouble or delay when the papers are ready to file; we bring him precedents, court decisions, statutes, and any other information necessary to help him prepare the incorporation papers on the soundest, most complete lines, or we draft the papers ourselves for his approval; when papers are approved we file and record—in whatever state, territory or province has been selected—and take all the steps required in that jurisdiction, furnish temporary incorporators and hold their first meeting, electing the directors and adopting the by-laws as instructed by the attorney, and opening the Minute Book in proper order. After incorporation we maintain the office or agent required in the state and, where required by the state, keep the duplicate stock ledger, and inform the attorney in advance throughout the year of all state taxes to be paid or reports to be filed to maintain the corporation's standing in the state, and of dates for stockholders' meetings, holding such meetings upon the attorney's instructions.

Similarly, in qualification of foreign corporations, this company furnishes extracts from the statutes and leading court decisions on which the attorney may judge as to necessity for qualification in any state; if it is decided that qualification is necessary, no matter in what state or states, we furnish all required forms and information, and attend to all details and furnish the statutory office or agent.

to engage in the retail drug business in Arkansas, and the fact that it kept the store open selling at retail until it could dispose of the whole stock was a mere incident to the collection of the debt, and did not amount to doing business within the provisions of the statute in regard to foreign corporations." Sillin vs. Hessig-Ellis Drug Co., Vol. 41 (Arkansas) *The Law Reporter*, No. 9, page 667. Joseph Morrison and M. F. Elms, for appellant. W. A. Leach, for appellee.

**Iowa.**

**Mere delivery within the state of goods or materials sold under a contract made without the state does not constitute "doing business" in Iowa.** The Iowa statutes provide that "No foreign stock corporation doing business in this state shall maintain any action in this state upon any contract made by it in this state unless prior to the making of such contract it shall have procured such permit [to carry on business in the state]." Appellee, here, is an Illinois corporation having no permit to do business in Iowa. In connection with a school building contract to be performed in Iowa, appellee, as a subcontractor entered into a contract made outside of Iowa with another foreign subcontractor to supply certain steel, delivered in Iowa. Action in equity is for a balance due against the principal contractor, its surety, and the school district. As a defense it was urged that appellee, as an unqualified foreign corporation, could not bring the action because of the statute. The Supreme Court of Iowa affirms the judgment below for plaintiff. After stating that it is well established in Iowa that an order for goods taken in the state sent to the principal without the state for acceptance there is not a contract made in Iowa the court says that in the instant case the contract was entered into without the state between two nonresidents and hence does not come within the provision of the statute, and further that, according to the rule "announced in a great number of decisions", "The portion of the contract to be performed in this state, to wit, delivery of the material, was merely incidental to the business in which the corporation was engaged, and did not constitute the doing or carrying on of business within this state within the meaning of said statute." Ryerson & Son, Inc. vs. Schraag et al., 229 N. W. 733. Chas. C. Heninger, of Sigourney, for appellants. Gillies, Daugherty & Oughton, of Ottumwa, for appellee. Hamilton & Updegraff, of Sigourney, for Independent School Dist. of Keota.

**New York.**

**Service of process on foreign corporation that had ceased to do business in New York and was dissolved held valid.** The Beaver Board Companies is a Delaware corporation formerly engaged in business in New York but which some years ago ceased to do business in that state becoming a holding company for a subsidiary, the Beaver Board Products Company, Inc., a New York corporation, which carried on the New York business. Certain assets of the latter company were caused to be transferred to the Certain-Teed Products Corporation whereupon the former company dissolved. Action is by a stockholder

of the Beaver Board Companies (for himself and for the benefit of other stockholders) against the three companies named, the two Beaver companies having neglected or refused, on request, to bring an action to that end against the transferee company, for restoration of the transferred assets, bad faith and inadequate consideration with a view to defraud the common stock holders being alleged. The sole question is whether or not the New York court has jurisdiction over the defendant Delaware corporation. The New York Supreme Court, Special Term, New York County, holds that it has jurisdiction under the circumstances as they exist. The Beaver companies though named as defendants, are in fact plaintiffs; the assets transferred were those of a New York corporation over which the court has jurisdiction, without question, and which "is bound to carry into effect any decree that the court may render"; identical officers and boards of directors controlled the two corporations; "it would be unjust and inequitable to say that plaintiff cannot acquire jurisdiction over the present moving defendant although process has been properly served upon it"; plaintiff is not seeking to deprive defendant of any property—he is seeking to bring about restitution, merely; the presence of the corporation as a formal party defendant is necessary to a complete disposition of the case; and, the court believes 'that on the facts as they appear in this case no constitutional right of the Beaver Board Companies is violated" by asserting and retaining jurisdiction over it. Guggenheimer vs. Beaver Board Cos. et al., 240 N. Y. Sup. 15. John J. Kirby, of New York City, for plaintiff. Cravath, de Gersdorff, Swaine & Wood, of New York City, for defendants.

**Oregon.**

**Foreign trust company may not qualify to act in a trust capacity under a single will instead of generally.** Asked by the Oregon Superintendent of Banks whether or not he had authority to qualify a New York trust company to act in a trust capacity under the provisions of a single will and not generally, the Attorney General of the State answers in the negative according to a dispatch in *The United States Daily*, May 6, 1930, page 13. The Attorney General says: "It is my opinion that the acts of a foreign trust company as an executor or trustee under the will of a resident of Oregon, or as a testamentary trustee, would constitute doing a trust business as that term is defined in the banking code, and that you have no power to issue a certificate of authority permitting such foreign trust company to act in such capacity until such trust company has fully complied with all the provisions of the laws of Oregon relating to the admission of a foreign trust company to do business in this state."

**Utah.**

**Setting up within Utah of machine sold in interstate commerce and acceptance, in settlement, of notes and mortgage executed in Utah does not constitute "doing business" in Utah.** Plaintiff is a New York corporation having its main office in Indiana, and operating

a branch in Idaho, Utah being included in the territory of this branch. It is not authorized to do business in Utah. Through the efforts of a Utah garage and service-station man who was designated as a local "dealer" in plaintiff's machinery and who kept for sale certain parts therefor and who solicited orders for the machinery, receiving commissions on sales of machinery made by or through him, all under a contract which, however, "by its terms, indicates that he is in no manner an agent of the company with powers to bind it in any respect," defendant, a resident of Utah, was interested in one of plaintiff's combination harvesters; a salesman working out of the Idaho branch, following up, took defendant's order which was sent through the Idaho office to the main office in Indiana for rejection or acceptance and where it was accepted; the harvester was shipped from Indiana to Utah, where after arrival, it was assembled by plaintiff's experts sent from Idaho for the purpose, after defendant had executed at a local bank a receipt and notes and a chattel mortgage in settlement. In an action to recover the balance due on the purchase price, and to foreclose the mortgage, one defense advanced was that plaintiff had no standing to prosecute the suit in the state as it was a foreign corporation engaged in business in the state but unlicensed. Reversing the court below and remanding the cause for a new trial (the case was tried on the question of rescission of contract), the Supreme Court of Utah, relying on the United States Supreme Court decision in the York Mfg. Co. case, 247 U. S. 21, says that the assembling was a necessary step in carrying out the contract of sale in interstate commerce, and further, that "the mere fact that notes and mortgages were executed in Utah does not take the transaction out of interstate commerce any more than if cash had been paid instead of the notes given," and that the plaintiff is entitled to maintain its action. Advance-Rumely Thresher Co., Inc. vs. Stohl, 283 P. 731. W. E. Davis, of Brigham, and H. R. Turner, of Pocatello, Idaho, for appellant. Thatcher & Young, of Ogden, for respondent.

**Washington.**

**Service of process on an officer of an unqualified foreign corporation temporarily within the state quashed.** Defendant in this action is a New York corporation. It is not engaged in business in Washington. Process was served on the president and managing officer while he was within the state of Washington, temporarily, for the purpose of negotiating with the plaintiff a contract of employment by the plaintiff of the defendant as a selling agent. Appearing specially defendant moved in the United States District Court, Western District of Washington, Southern Division, to quash the service. The court granted the motion, saying that there was no sufficient showing to take this case out of the rule stated in Rosenberg Co. vs. Curtis Brown Co., 260 U. S. 516 (THE CORPORATION JOURNAL, February, 1923, page 162) and James-Dickinson Co. vs. Harry, 273 U. S. 119 (THE CORPORATION JOURNAL, February, 1927, page 322). I. P. Callison & Sons, Inc. vs. The John G. Paton Co., Inc. Decided April 4, 1930 (not yet officially reported). F. L. Morgan and E. E. Cross, Hoquiam, for plaintiff. Kerr, McCord & Ivey, Seattle, for defendant.

# Taxation

**Canada.**

**Ordinary radio receiving set must be licensed as a radiotelegraph apparatus.** The Canadian Radiotelegraph Act, 1913, provides that "No person shall establish any radiotelegraph station or install or work any radiotelegraph apparatus in any place in Canada or on board any ship registered in Canada except under and in accordance with a license granted in that behalf by the Minister." Radiotelegraph is defined as including "any wireless system for conveying electric signals or messages including radiotelephones." This is an appeal from a decision of a stipendiary magistrate dismissing a prosecution against the owner of an ordinary radio receiving set for failure to procure a license and pay the license fee of $1.00. It was "contended that a radio receiver, as in common use for receiving messages, speeches, vocal and instrumental music broadcast by broadcasting stations, is a radiotelegraph within the meaning of the Act." The Prince Edward Island Supreme Court, reversing the magistrate, says that in its opinion the ordinary radio receiver comes within the provisions of the Act and that the owner thereof is subject to the license fee. The court says that as this is in the nature of a test case the defendant is sentenced to pay a fine of $1.00 only, without costs, or, in default of payment to serve a ten day period of imprisonment in the county jail. The court states that there are between 3,000 and 4,000 such sets in the Province but that the license for operating such is paid for 600 only, and that this is manifestly unfair. Nolan vs. McAssey, [1930] 2 D. L. R. 323. H. Strong, K. C., and D. O. Stewart, for plaintiff. Defendant not represented.

**Louisiana.**

**Oil severance tax held valid.** Act No. 5 of 1928 is involved here. In the digest of the decision of a United States District Court denying the interlocutory injunction prayed for to prevent the collection of the tax (28 F. (2d) 441) appearing in THE CORPORATION JOURNAL for January, 1929, page 329, it was said that the act "provides for a severance tax on oil at sliding scale rates per barrel based on the gravity of the oil, the tax rate increasing with bracketed increases in gravity." It was alleged that the gravity classification is wholly arbitrary and grossly discriminatory. On appeal to the United States Supreme Court that court decided that the questions presented could not be resolved satisfactorily from the affidavits submitted, and directed that an injunction should be granted *pendente lite* on stated terms (279 U. S. 813). The District Court thereafter sustained the tax, denied the injunction, and dismissed the bill (34 F. (2d) 47, THE CORPORATION JOURNAL for December, 1929, page 68). Appeal was taken to the United States Supreme Court which now affirms the judgment below finding "no ground for holding that the tax in this instance violated the Federal Constitution." Ohio Oil Company vs. Conway, Supervisor of Public Accounts for Louisiana, Docket No. 440, October Term, 1929, decided April 14, 1930 (not yet officially reported).

**Missouri.**

**State taxation; United States bonds.** The Missouri tax involved in this action is a property tax on domestic insurance companies based, in the case of each company, on the value of all of its assets other than real estate in excess of the legally required reserve necessary to reinsure its outstanding risks and of any unpaid policy claims, a return covering all of which is required. The appellant company here had a substantial amount of money invested in United States bonds: in its return it deducted the value of these bonds from the amount of the excess in value of its "other assets" over the aggregate in value of the two specified deductible items, and claimed to be taxable on the remainder only; the board of equalization refused to accept this return (but not because of the method of treating the bonds, which it asserted were not taxable); on review before the Missouri Supreme Court that court held that the aggregate of the reserves and unpaid claims should be reduced, in order to determine the amount thereof properly deductible, by the proportion that the value of the United States bonds bears to the total assets. The United States Supreme Court reverses the judgment and sustains the company's method of computation (Mr. Justice Stone dissenting, with an opinion in which Mr. Justice Holmes and Mr. Justice Brandeis concur), holding that "where as in this case the ownership of United States bonds is made the basis of denying the full exemption which is accorded to those who own no such bonds this amounts to an infringement of the guaranteed freedom from taxation." The court says that "it necessarily follows from the immunity created by Federal authority that a State may not subject one to a greater burden upon the taxable property merely because he owns tax-exempt government securities. Neither ingenuity in calculation nor form of words in state enactments can deprive the owner of the tax-exemption established for the benefit of the United States." Missouri Insurance Co. vs. Gehner, Assessor, etc., et al., Docket No. 222, October Term, 1929, decided April 14, 1930 (not yet officially reported).

**New York.**

**Change in minimum business corporation franchise (income) tax provisions.** Subdivision 10 of Section 214 (Article 9A) of the New York Tax Law has been amended by Chapter 684, Laws of 1930, effective April 22, 1930, to provide that the minimum annual franchise or privilege tax on domestic and foreign business corporations shall be (1) not less than $25 ($10, heretofore), and (2) not less than 1 mill on each dollar of its (apportioned) issued capital stock at its face value (as before), and (3) not less than would be produced by applying a rate of 4½ per cent (2 per cent heretofore) to a base ("consisting of" under the old law) *"found by using the following formula: From the sum of* the entire net income and salaries and other compensation paid to all elected and appointed officers, and/or paid to any stockholder owning in excess of five per centum of the issued capital stock of the corporation, *deduct as a specific exemption the sum of* $5,000 *and any net loss for the reported year. From the sum so found an exemption of* 70

*per cent thereof shall be granted and the remainder shall be used as the base of the tax."* In lieu of the immediately foregoing matter in italics the old law read "excepting dividends, and after deducting from the base $6,000 and any deficit for the reported year."

**Utah.**

**Construction machinery, animals, and supplies of foreign construction company in state on valuation day are subject to general property tax.** The appellant, a foreign construction company, in 1925 moved a quantity of its machinery, animals, and supplies into Utah in connection with a construction job undertaken by it, a large part of which was in the state on valuation or assessment day (January 1, 1926), but all of which, the construction work having been completed, had either been consumed or had been removed from the state by April 30, 1926. Action is to recover personal property tax for 1926, paid under protest, based on an adjusted assessment on the mentioned personalty. The Utah constitution provides that all persons, including corporations, in the state or doing business therein, shall be subject to general property taxes in respect of all real and personal property "owned or used" by them within the territorial limits of the authority levying the tax. Appellant asserted that the property in question, being in the state temporarily only, had not acquired a taxable situs. The Utah Supreme Court, sustains the tax, citing, in addition to cases, 2 Cooley, Taxation (4th Ed.) § 452, wherein it is stated that taxable situs depends on whether or not the property is "permanently" within the state, "permanently" meaning "a more or less permanent location for the time being." Hamilton & Gleason Co. vs. Emery County et al., 285 P. 1006. L. A. McGee, of Price, for appellant. F. E. Woods, of Price, and W. G. Peacock, of Castle Dale, for respondents.

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**The Corporation Journal.**

As usual, there will be no issues of THE CORPORATION JOURNAL for July, August, and September. The next issue will be that for October, 1930.

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# Some Important Matters for June, July, August, September and October

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ARIZONA—Report to Corporation Commission and Registration Fee due during June.—Domestic and Foreign Corporations.

ARKANSAS—Anti-trust Affidavit due on or before August 1.—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before August 10.—Domestic and Foreign Corporations.

CALIFORNIA—Franchise Tax based on net income. Second installment due on or before September 15 in case of a calendar year return.—Domestic and Foreign Corporations.

NOTE: This tax is in lieu of the former tax based on the value of corporate franchises.

CONNECTICUT—Income Tax due on or before September 1.—Domestic and Foreign Corporations.

Annual Report due on or before August 15.—Domestic and Foreign Corporations.

DELAWARE—Annual Franchise Tax due between April 1 and July 1.—Domestic Corporations.

GEORGIA—Certified Statement for Registration due on or before November 1.—Domestic and Foreign Corporations.

Income Tax Return and part of tax due June 15.—Domestic and Foreign Corporations.

IDAHO—Annual Statement due between July 1 and September 1.—Domestic and Foreign Corporations.

Annual License Tax due between July 1 and September 1.—Domestic and Foreign Corporations.

ILLINOIS—Annual License Fee or Franchise Tax due on or before July 1, but may be paid up to July 31 without penalty.—Domestic and Foreign Corporations.

INDIANA—Annual Report due within 30 days after June 30.—Domestic Corporations.

IOWA—Annual Report due between the first day of July and the first day of August.—Domestic and Foreign Corporations.

Additional statement due at the time of making the Annual Report in July.—Foreign Corporations.

MAINE—Annual Franchise Tax due on or before September 1.—Domestic Corporations.

MARYLAND—Franchise Tax due on or before October 1.—Domestic Business Corporations.

MICHIGAN—Annual Report and Franchise Tax due during July or August.—Domestic and Foreign Corporations.

MISSISSIPPI—Annual Report to factory inspector due during July—Domestic and Foreign Corporations.

Annual Report due on or before June 30.—Domestic and Foreign Corporations.

MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July.—Domestic and Foreign Corporations.

MONTANA—Annual License Tax based on Net Income due between June 1 and June 15.—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due during July.—Domestic and Foreign Corporations.

Annual Statement due on or before September 15.—Foreign Corporations.

NEVADA—Annual List of Officers due on or before July 1.—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax due on or before first Monday in August.—Domestic Corporations.

NEW YORK—Annual Franchise (Income) Tax Return of Net Income on or before July 1.—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Annual Franchise Tax due on or before October 1.—Domestic and Foreign Corporations.

Annual Report to determine amount of franchise tax due on or before July 1.—Domestic and Foreign Corporations.

NORTH DAKOTA—Corporation Report due during July.—Domestic and Foreign Corporations.

OHIO—Annual Franchise Tax due on or before July 15.—Domestic and Foreign Corporations.

OKLAHOMA—Annual Capital Stock Affidavit due between July 1 and August 1.—Foreign Corporations.

Annual License Tax Report due on or before July 31.—Domestic and Foreign Corporations.

OREGON—License Fee due between July 1 and August 15.—Foreign Corporations.

Annual License Fee due within 30 days after July 15.—Domestic Corporations.

Annual Statement due during June.—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before first day of July.—Domestic and Foreign Corporations.

TENNESSEE—Annual Report and Franchise Tax due on or before July 1.—Domestic and Foreign Corporations.

UNITED STATES—Second Installment Income Tax due June 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

Third Installment of Income Tax due on or before September 15.—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Annual License Tax report due on or before July 1.—Domestic and Foreign Corporations.

WASHINGTON—License Fee due on or before July 1.—Domestic and Foreign Corporations.

WEST VIRGINIA—Tax statements due on or before July 1.—Domestic Corporations.

Annual License Tax due on or before July 1.—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before June 30.—Foreign and non-resident Domestic Corporations.

WYOMING—Annual statement and license tax due on or before July 1.—Domestic and Foreign Corporations.

# The Corporation Trust Company's Supplementary Literature

*In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:*

**What Constitutes Doing Business.** (Revised to April, 1930). A 208-page book containing brief digests of decisions selected from those in the various states as indicating what is construed in each state as "doing business." The digests are arranged by states, but a Table of Cases and a Topical Index make them also accessible either by case name or topic.

**Questionnaire on Business Outside State of Organization.** This is a form for attorney's use in determining when a corporation should be qualified. The questions are those which will usually bring out the points necessary to be considered.

**Why a Transfer Agent?** The question of why corporations, even those of small capitilization or with inactive or closely held stock, are safer when their stock records are in the hands of an experienced transfer agent is answered in this pamphlet by actual incidents from the experiences of different corporations.

**Why Corporations Leave Home.** This is an informal discussion, from the business man's point of view and in layman's language, of why so many business companies are organized under the laws of Delaware instead of in their home states. While primarily for laymen, lawyers also may find this pamphlet useful when considering the matter of what state to choose for incorporation of a client's business.

**Analysis of Delaware Amendments of 1929.** In this especially prepared pamphlet the full text of all provisions, both of the corporation law and the franchise tax law, which were changed by the amendment of 1929 is so presented as to show (1) the law as it stood before amendment; (2) matter repealed; (3) new matter. Then, immediately following each section changed, is a short, clear explanation of the reason for and effect of the change.

**Delaware Corporations.** Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.

**Special Reports.** When cases are decided that seem to be of some particular interest or significance in connection with the matter of doing business by foreign corporations, The Corporation Trust Company sometimes issues one of these special reports. One on the Southwest Company case is now available.

**Transfer Requirements Chart.** This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfer are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.